

Congress of the United States
Washington, DC 20515

February 16, 2017

133

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Pai:

We write to express our disappointment with the decision made by the FCC to end the defense of intrastate rate caps for incarcerated individuals.

Prior to the caps on prison phone rates, making calls to loved ones was a financial burden for many Americans who are paying upwards of \$1.50 per minute. Most families depend on these phone calls to maintain the vital relationships their incarcerated loved ones will depend on when they are released. In fact, 70 percent of incarcerated people kept in contact with their loved ones over the phone, rather than in person.¹

In 2012, the FCC placed a limit on what companies could charge for interstate phone calls. However, this limit does not apply for phone calls made within a state, intrastate calls, which can still be too high and represent the bulk of phone calls made from correctional facilities. Capping rates for calls within a state is an essential piece in fixing our nation's broken incarceration system.

Evidence suggests that greater connection to family and loved ones leads to lower rates of recidivism. Maintaining access to telecommunication is particularly important for millions of American families—as of 2015, 2.7 million children in the United States have an incarcerated parent.²

Affordable phone calls are important for keeping our families strong and our communities safe. We urge you and Commissioner O'Reilly to reconsider your decision on this matter.


Sincerely,

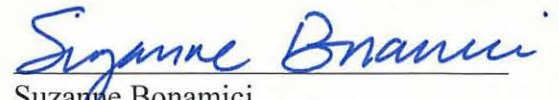


Keith Ellison
Member of Congress

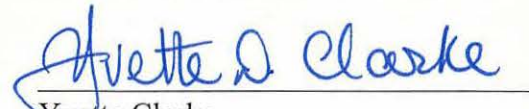


Bobby Rush
Member of Congress



Don Beyer
Member of Congress


Suzanne Bonamici
Member of Congress



Judy Chu
Member of Congress


Yvette Clarke
Member of Congress


Steve Cohen
Member of Congress


Elijah E. Cummings
Member of Congress


Danny K. Davis
Member of Congress

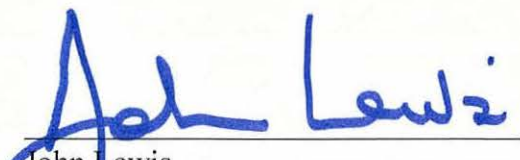

Raúl M. Grijalva
Member of Congress



Luis V. Gutiérrez
Member of Congress





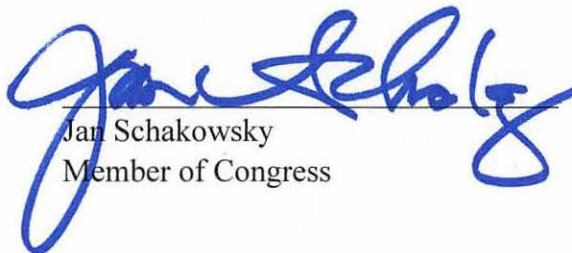

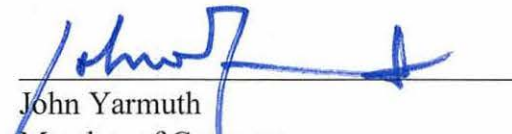

Hakeem Jeffries
Member of Congress


Ro Khanna
Member of Congress


Barbara Lee
Member of Congress


John Lewis
Member of Congress


James P. McGovern
Member of Congress


Jerry McNerney
Member of Congress
Gwen Moore
Member of Congress
Mark Pocan
Member of Congress
Jamie Raskin
Member of Congress
Cedric L. Richmond
Member of Congress
Jose E. Serrano
Member of Congress
Jan Schakowsky
Member of Congress
Mark Takano
Member of Congress
Bonnie Watson Coleman
Member of Congress
John Yarmuth
Member of Congress

CC: Mignon Clyburn, Commissioner, Federal Communications Commission
Michael O'Reilly, Commissioner, Federal Communications Commission

[1] <https://ecfsapi.fcc.gov/file/10113804521853/Comments%20of%20ICS%20Advocates%20-%20As%20Submitted.pdf>

[2] <https://www.prisonpolicy.org/reports/prisonvisits.html>



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Don Beyer
U.S. House of Representatives
1119 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Beyer:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."² For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."³

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

¹ *Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012).

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There are now three separate sets of cases pending before the D.C. Circuit in which petitioners are challenging various parts of the FCC's inmate calling regulations. The first set challenges the Commission's 2013 Order. The court stayed large portions of that order in January 2014,⁴ and then granted the Commission's December 10, 2014, motion to hold the case in abeyance while the Commission revisited its rules.⁵ Your letter references the second set of cases, which challenge the Commission's 2015 Order. The court stayed significant portions of that Order on two occasions in 2016,⁶ and it held oral argument on the case on February 6, 2017. The third set of cases challenges the Commission's 2016 Reconsideration Order. In November 2016, the court stayed that Order, too, and *sua sponte* held the case in abeyance pending resolution of the litigation challenging the 2015 Order.⁷

In light of the recent change in leadership and composition of the Commission, there are now several parts of the FCC's 2015 Order that a majority of the FCC's commissioners view as unlawful. Nonetheless, the FCC did not file a motion to hold the entire case in abeyance, which if granted would have resulted in the court postponing the oral argument scheduled on February 6. Nor did the FCC otherwise move to postpone or delay the oral argument.

Instead, the FCC notified the court on January 31, 2017, that it would allow those who had litigated this case for some time to have their day in court on February 6. A copy of that letter is attached. It contains additional information about the FCC's decision to proceed with the case.

Consistent with my long-standing view that the rates charged for inmate calling services are too high, agency counsel ably and vigorously defended the substantial portions of the Commission's regulations at oral argument that are both lawful and have the support of a majority of the FCC's current commissioners.⁸ Among other points, agency counsel defended the FCC's authority to cap interstate rates for inmate calling services pursuant to the Commission's authority in Section 201 of the Communications Act and to regulate ancillary fees. Agency counsel also defended the FCC's authority to exclude from its cost calculations, when setting just and reasonable rate caps for interstate calls, portions of the commission and in-kind service payments that inmate calling providers make to correctional facilities. In addition, the FCC ceded half of its oral argument time to counsel for intervenors in support of the respondents, who defended all aspects of the agency's Order at oral argument. If the court ultimately agrees with the positions the FCC defended at oral argument, the result could go a long way in helping to reduce the rates and fees associated with inmate calling services.

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⁵ *Securus Techs., Inc. v. FCC*, Nos. 13-1280 *et al.* (D.C. Cir. Dec. 16, 2014) (per curiam).

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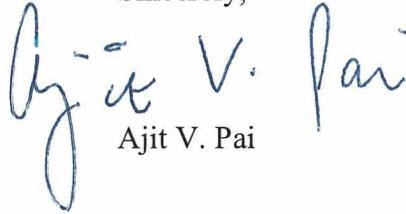
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But given the circumstances in which the Commission found itself in this case—where oral argument was scheduled less than two weeks after I was designated to lead the Commission, and the Commissioners who dissented from the order on review constituted a majority at the agency—we determined that defending the portions of the Order supported by a majority of FCC commissioners was the most appropriate way to proceed.

Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Suzanne Bonamici
U.S. House of Representatives
439 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Bonamici:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.⁹

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."¹⁰ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."¹¹

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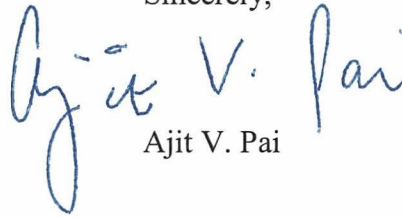
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Judy Chu
U.S. House of Representatives
2423 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Chu:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹⁷

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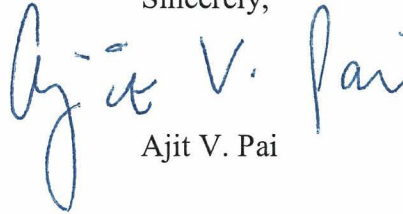
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Yvette D. Clarke
U.S. House of Representatives
2058 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Clarke:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.²⁵

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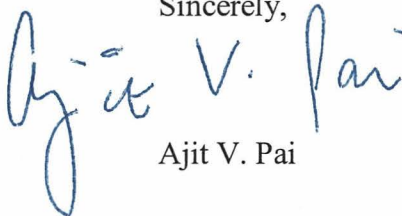
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Ajit V. Pai



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WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Steve Cohen
U.S. House of Representatives
2404 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Cohen:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.³³

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."³⁴ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."³⁵

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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There are now three separate sets of cases pending before the D.C. Circuit in which petitioners are challenging various parts of the FCC's inmate calling regulations. The first set challenges the Commission's 2013 Order. The court stayed large portions of that order in January 2014,³⁶ and then granted the Commission's December 10, 2014, motion to hold the case in abeyance while the Commission revisited its rules.³⁷ Your letter references the second set of cases, which challenge the Commission's 2015 Order. The court stayed significant portions of that Order on two occasions in 2016,³⁸ and it held oral argument on the case on February 6, 2017. The third set of cases challenges the Commission's 2016 Reconsideration Order. In November 2016, the court stayed that Order, too, and *sua sponte* held the case in abeyance pending resolution of the litigation challenging the 2015 Order.³⁹

In light of the recent change in leadership and composition of the Commission, there are now several parts of the FCC's 2015 Order that a majority of the FCC's commissioners view as unlawful. Nonetheless, the FCC did not file a motion to hold the entire case in abeyance, which if granted would have resulted in the court postponing the oral argument scheduled on February 6. Nor did the FCC otherwise move to postpone or delay the oral argument.

Instead, the FCC notified the court on January 31, 2017, that it would allow those who had litigated this case for some time to have their day in court on February 6. A copy of that letter is attached. It contains additional information about the FCC's decision to proceed with the case.

Consistent with my long-standing view that the rates charged for inmate calling services are too high, agency counsel ably and vigorously defended the substantial portions of the Commission's regulations at oral argument that are both lawful and have the support of a majority of the FCC's current commissioners.⁴⁰ Among other points, agency counsel defended the FCC's authority to cap interstate rates for inmate calling services pursuant to the Commission's authority in Section 201 of the Communications Act and to regulate ancillary fees. Agency counsel also defended the FCC's authority to exclude from its cost calculations, when setting just and reasonable rate caps for interstate calls, portions of the commission and in-kind service payments that inmate calling providers make to correctional facilities. In addition, the FCC ceded half of its oral argument time to counsel for intervenors in support of the respondents, who defended all aspects of the agency's Order at oral argument. If the court ultimately agrees with the positions the FCC defended at oral argument, the result could go a long way in helping to reduce the rates and fees associated with inmate calling services.

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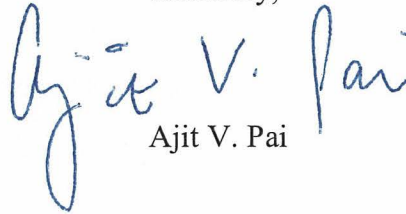
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Elijah E. Cummings
U.S. House of Representatives
2163 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Cummings:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.⁴¹

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."⁴² For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."⁴³

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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In light of the recent change in leadership and composition of the Commission, there are now several parts of the FCC's 2015 Order that a majority of the FCC's commissioners view as unlawful. Nonetheless, the FCC did not file a motion to hold the entire case in abeyance, which if granted would have resulted in the court postponing the oral argument scheduled on February 6. Nor did the FCC otherwise move to postpone or delay the oral argument.

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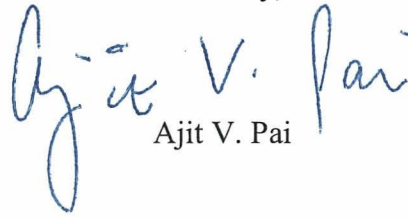
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Danny K. Davis
U.S. House of Representatives
2159 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Davis:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.⁴⁹

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."⁵⁰ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."⁵¹

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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In light of the recent change in leadership and composition of the Commission, there are now several parts of the FCC's 2015 Order that a majority of the FCC's commissioners view as unlawful. Nonetheless, the FCC did not file a motion to hold the entire case in abeyance, which if granted would have resulted in the court postponing the oral argument scheduled on February 6. Nor did the FCC otherwise move to postpone or delay the oral argument.

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Consistent with my long-standing view that the rates charged for inmate calling services are too high, agency counsel ably and vigorously defended the substantial portions of the Commission's regulations at oral argument that are both lawful and have the support of a majority of the FCC's current commissioners.⁵⁶ Among other points, agency counsel defended the FCC's authority to cap interstate rates for inmate calling services pursuant to the Commission's authority in Section 201 of the Communications Act and to regulate ancillary fees. Agency counsel also defended the FCC's authority to exclude from its cost calculations, when setting just and reasonable rate caps for interstate calls, portions of the commission and in-kind service payments that inmate calling providers make to correctional facilities. In addition, the FCC ceded half of its oral argument time to counsel for intervenors in support of the respondents, who defended all aspects of the agency's Order at oral argument. If the court ultimately agrees with the positions the FCC defended at oral argument, the result could go a long way in helping to reduce the rates and fees associated with inmate calling services.

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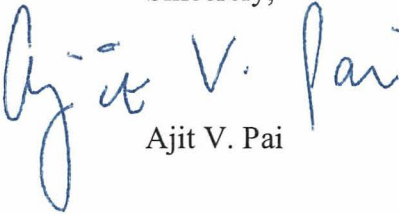
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Keith Ellison
U.S. House of Representatives
2263 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Ellison:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.⁵⁷

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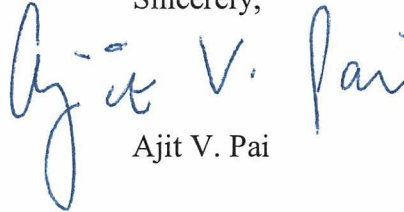
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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 28, 2017

The Honorable Raúl M. Grijalva
U.S. House of Representatives
1511 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Grijalva:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.⁶⁵

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⁷⁰ *Global Tel*Link v. FCC*, Nos. 15-1461 *et al.* 1–2 (D.C. Cir. Mar. 7, 2016) (per curiam); *Global Tel*Link v. FCC*, Nos. 15-1461 *et al.* 1 (D.C. Cir. Mar. 23, 2016) (per curiam).

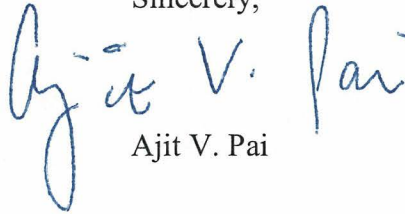
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

Sincerely,

A handwritten signature in blue ink that reads "Ajit V. Pai". The signature is written in a cursive, flowing style. The first name "Ajit" is written with a large, looped 'A'. The middle initial "V." is written with a simple 'V' followed by a period. The last name "Pai" is written with a large, looped 'P'.

Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 28, 2017

The Honorable Luis V. Gutiérrez
U.S. House of Representatives
2408 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Gutiérrez:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.⁷³

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."⁷⁴ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."⁷⁵

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

⁷³ *Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, 27 FCC Rcd 16629 (2012).

⁷⁴ *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14217 (2013) (Dissenting Statement of Commissioner Ajit Pai).

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There are now three separate sets of cases pending before the D.C. Circuit in which petitioners are challenging various parts of the FCC's inmate calling regulations. The first set challenges the Commission's 2013 Order. The court stayed large portions of that order in January 2014,⁷⁶ and then granted the Commission's December 10, 2014, motion to hold the case in abeyance while the Commission revisited its rules.⁷⁷ Your letter references the second set of cases, which challenge the Commission's 2015 Order. The court stayed significant portions of that Order on two occasions in 2016,⁷⁸ and it held oral argument on the case on February 6, 2017. The third set of cases challenges the Commission's 2016 Reconsideration Order. In November 2016, the court stayed that Order, too, and *sua sponte* held the case in abeyance pending resolution of the litigation challenging the 2015 Order.⁷⁹

In light of the recent change in leadership and composition of the Commission, there are now several parts of the FCC's 2015 Order that a majority of the FCC's commissioners view as unlawful. Nonetheless, the FCC did not file a motion to hold the entire case in abeyance, which if granted would have resulted in the court postponing the oral argument scheduled on February 6. Nor did the FCC otherwise move to postpone or delay the oral argument.

Instead, the FCC notified the court on January 31, 2017, that it would allow those who had litigated this case for some time to have their day in court on February 6. A copy of that letter is attached. It contains additional information about the FCC's decision to proceed with the case.

Consistent with my long-standing view that the rates charged for inmate calling services are too high, agency counsel ably and vigorously defended the substantial portions of the Commission's regulations at oral argument that are both lawful and have the support of a majority of the FCC's current commissioners.⁸⁰ Among other points, agency counsel defended the FCC's authority to cap interstate rates for inmate calling services pursuant to the Commission's authority in Section 201 of the Communications Act and to regulate ancillary fees. Agency counsel also defended the FCC's authority to exclude from its cost calculations, when setting just and reasonable rate caps for interstate calls, portions of the commission and in-kind service payments that inmate calling providers make to correctional facilities. In addition, the FCC ceded half of its oral argument time to counsel for intervenors in support of the respondents, who defended all aspects of the agency's Order at oral argument. If the court ultimately agrees with the positions the FCC defended at oral argument, the result could go a long way in helping to reduce the rates and fees associated with inmate calling services.

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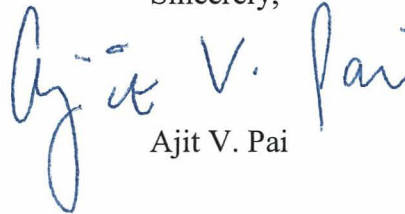
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Hakeem Jeffries
U.S. House of Representatives
1607 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Jeffries:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.⁸¹

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."⁸² For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."⁸³

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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In light of the recent change in leadership and composition of the Commission, there are now several parts of the FCC's 2015 Order that a majority of the FCC's commissioners view as unlawful. Nonetheless, the FCC did not file a motion to hold the entire case in abeyance, which if granted would have resulted in the court postponing the oral argument scheduled on February 6. Nor did the FCC otherwise move to postpone or delay the oral argument.

Instead, the FCC notified the court on January 31, 2017, that it would allow those who had litigated this case for some time to have their day in court on February 6. A copy of that letter is attached. It contains additional information about the FCC's decision to proceed with the case.

Consistent with my long-standing view that the rates charged for inmate calling services are too high, agency counsel ably and vigorously defended the substantial portions of the Commission's regulations at oral argument that are both lawful and have the support of a majority of the FCC's current commissioners.⁸⁸ Among other points, agency counsel defended the FCC's authority to cap interstate rates for inmate calling services pursuant to the Commission's authority in Section 201 of the Communications Act and to regulate ancillary fees. Agency counsel also defended the FCC's authority to exclude from its cost calculations, when setting just and reasonable rate caps for interstate calls, portions of the commission and in-kind service payments that inmate calling providers make to correctional facilities. In addition, the FCC ceded half of its oral argument time to counsel for intervenors in support of the respondents, who defended all aspects of the agency's Order at oral argument. If the court ultimately agrees with the positions the FCC defended at oral argument, the result could go a long way in helping to reduce the rates and fees associated with inmate calling services.

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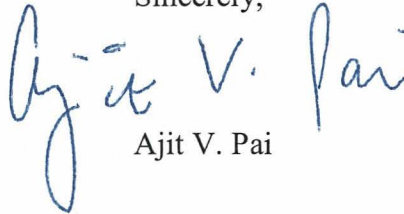
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Rohit Khanna
U.S. House of Representatives
513 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Khanna:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.⁸⁹

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."⁹⁰ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."⁹¹

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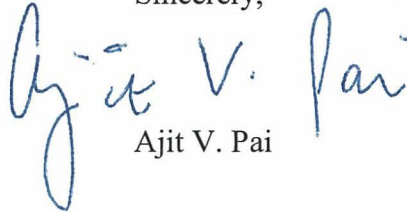
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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 28, 2017

The Honorable Barbara Lee
U.S. House of Representatives
2267 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Lee:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.⁹⁷

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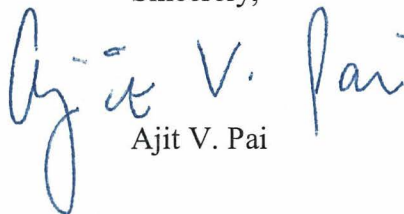
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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 28, 2017

The Honorable John Lewis
U.S. House of Representatives
343 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Lewis:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹⁰⁵

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In light of the recent change in leadership and composition of the Commission, there are now several parts of the FCC's 2015 Order that a majority of the FCC's commissioners view as unlawful. Nonetheless, the FCC did not file a motion to hold the entire case in abeyance, which if granted would have resulted in the court postponing the oral argument scheduled on February 6. Nor did the FCC otherwise move to postpone or delay the oral argument.

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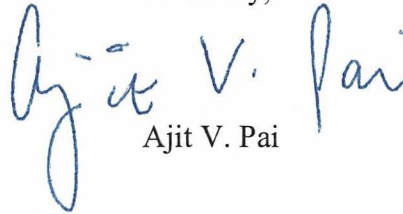
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

Sincerely,

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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 28, 2017

The Honorable Jim McGovern
U.S. House of Representatives
438 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman McGovern:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹¹³

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."¹¹⁴ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."¹¹⁵

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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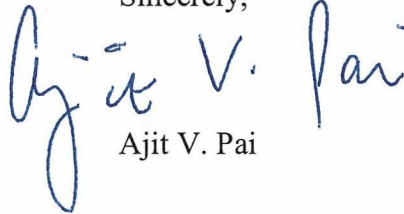
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Jerry McNerney
U.S. House of Representatives
2265 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman McNerney:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹²¹

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."¹²² For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."¹²³

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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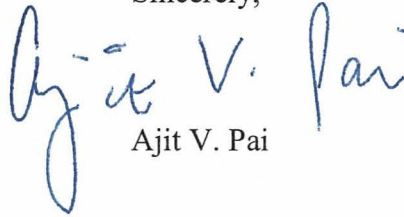
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Gwen Moore
U.S. House of Representatives
2252 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Moore:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹²⁹

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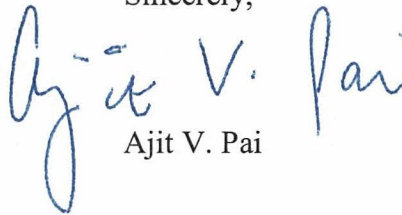
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Mark Pocan
U.S. House of Representatives
1421 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Pocan:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

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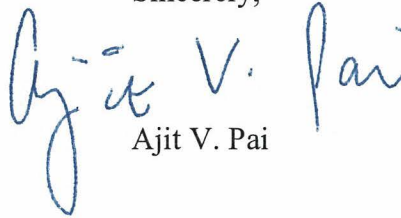
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Jamie Raskin
U.S. House of Representatives
431 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Raskin:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹⁴⁵

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."¹⁴⁶ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."¹⁴⁷

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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There are now three separate sets of cases pending before the D.C. Circuit in which petitioners are challenging various parts of the FCC's inmate calling regulations. The first set challenges the Commission's 2013 Order. The court stayed large portions of that order in January 2014,¹⁴⁸ and then granted the Commission's December 10, 2014, motion to hold the case in abeyance while the Commission revisited its rules.¹⁴⁹ Your letter references the second set of cases, which challenge the Commission's 2015 Order. The court stayed significant portions of that Order on two occasions in 2016,¹⁵⁰ and it held oral argument on the case on February 6, 2017. The third set of cases challenges the Commission's 2016 Reconsideration Order. In November 2016, the court stayed that Order, too, and *sua sponte* held the case in abeyance pending resolution of the litigation challenging the 2015 Order.¹⁵¹

In light of the recent change in leadership and composition of the Commission, there are now several parts of the FCC's 2015 Order that a majority of the FCC's commissioners view as unlawful. Nonetheless, the FCC did not file a motion to hold the entire case in abeyance, which if granted would have resulted in the court postponing the oral argument scheduled on February 6. Nor did the FCC otherwise move to postpone or delay the oral argument.

Instead, the FCC notified the court on January 31, 2017, that it would allow those who had litigated this case for some time to have their day in court on February 6. A copy of that letter is attached. It contains additional information about the FCC's decision to proceed with the case.

Consistent with my long-standing view that the rates charged for inmate calling services are too high, agency counsel ably and vigorously defended the substantial portions of the Commission's regulations at oral argument that are both lawful and have the support of a majority of the FCC's current commissioners.¹⁵² Among other points, agency counsel defended the FCC's authority to cap interstate rates for inmate calling services pursuant to the Commission's authority in Section 201 of the Communications Act and to regulate ancillary fees. Agency counsel also defended the FCC's authority to exclude from its cost calculations, when setting just and reasonable rate caps for interstate calls, portions of the commission and in-kind service payments that inmate calling providers make to correctional facilities. In addition, the FCC ceded half of its oral argument time to counsel for intervenors in support of the respondents, who defended all aspects of the agency's Order at oral argument. If the court ultimately agrees with the positions the FCC defended at oral argument, the result could go a long way in helping to reduce the rates and fees associated with inmate calling services.

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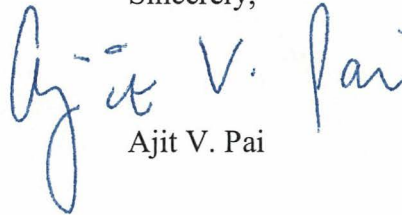
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Cedric L. Richmond
U.S. House of Representatives
420 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Richmond:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹⁵³

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."¹⁵⁴ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."¹⁵⁵

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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Consistent with my long-standing view that the rates charged for inmate calling services are too high, agency counsel ably and vigorously defended the substantial portions of the Commission's regulations at oral argument that are both lawful and have the support of a majority of the FCC's current commissioners.¹⁶⁰ Among other points, agency counsel defended the FCC's authority to cap interstate rates for inmate calling services pursuant to the Commission's authority in Section 201 of the Communications Act and to regulate ancillary fees. Agency counsel also defended the FCC's authority to exclude from its cost calculations, when setting just and reasonable rate caps for interstate calls, portions of the commission and in-kind service payments that inmate calling providers make to correctional facilities. In addition, the FCC ceded half of its oral argument time to counsel for intervenors in support of the respondents, who defended all aspects of the agency's Order at oral argument. If the court ultimately agrees with the positions the FCC defended at oral argument, the result could go a long way in helping to reduce the rates and fees associated with inmate calling services.

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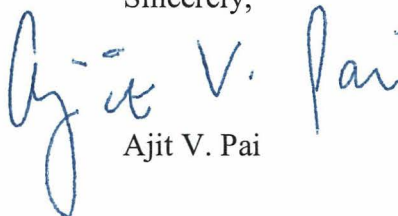
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Bobby L. Rush
U.S. House of Representatives
2188 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rush:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹⁶¹

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."¹⁶² For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."¹⁶³

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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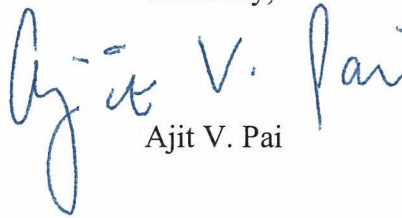
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Jan Schakowsky
U.S. House of Representatives
2367 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Schakowsky:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹⁶⁹

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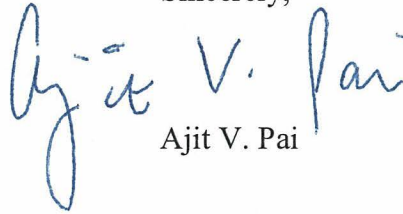
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Jose E. Serrano
U.S. House of Representatives
2354 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Serrano:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹⁷⁷

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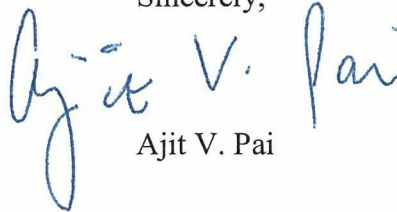
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Mark Takano
U.S. House of Representatives
1507 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Takano:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹⁸⁵

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."¹⁸⁶ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."¹⁸⁷

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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In light of the recent change in leadership and composition of the Commission, there are now several parts of the FCC's 2015 Order that a majority of the FCC's commissioners view as unlawful. Nonetheless, the FCC did not file a motion to hold the entire case in abeyance, which if granted would have resulted in the court postponing the oral argument scheduled on February 6. Nor did the FCC otherwise move to postpone or delay the oral argument.

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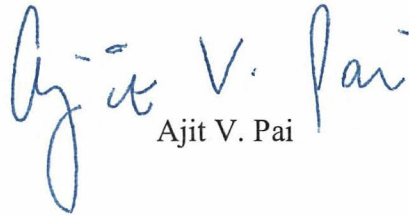
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Thank you again for your inquiry. The FCC would welcome the opportunity to provide technical assistance on any legislative solution, as you deem appropriate.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable Bonnie Watson Coleman
U.S. House of Representatives
1535 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Watson Coleman:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.¹⁹³

Early on, I concluded that there was a market failure. Inmates cannot choose their calling service provider, and providers do not compete with each other for an inmate's calls. Instead, a prison administrator signs an exclusive contract with a single carrier. The decision to enter into such a contract often is driven by commissions and in-kind services offered to the prison by a prospective provider. As such, the incentives of prison administrators and inmates may not align. This means that "we cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable."¹⁹⁴ For those reasons, I made clear my belief that the agency "must take action to meet our duties under the law, not to mention our obligations of conscience."¹⁹⁵

Unfortunately, however, the FCC's well-intentioned efforts have not been fully consistent with the law. In particular, the FCC has attempted to cap rates for intrastate inmate calls in apparent violation of the clear limits Congress placed on the agency's intrastate authority, and it failed to account for all record evidence. Indeed, the U.S. Court of Appeals for the D.C. Circuit has taken the highly unusual step of issuing four different orders staying substantial parts of the FCC's rules.

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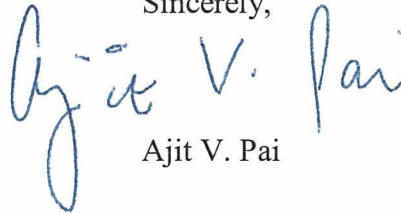
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Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 28, 2017

The Honorable John Yarmuth
U.S. House of Representatives
131 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Yarmuth:

Thank you for your February 16, 2017, letter regarding prison payphones. And thank you for your efforts to help reduce the high rates that inmates and their families pay to stay in touch.

For the past few years, the FCC has been working in good faith to realize a common and bipartisan goal: to substantially reduce the high rates that are being charged for inmate calling services. Those efforts began in 2012 when I joined all of my fellow commissioners in voting unanimously to launch a proceeding to consider new rules for interstate inmate calling services pursuant to the Commission's duty under Section 201 of the Communications Act to ensure that the rates for interstate telecommunications services are just and reasonable.²⁰¹

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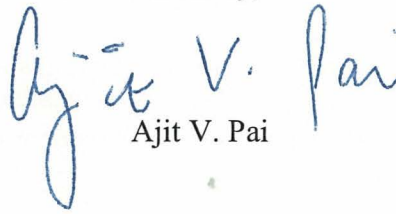
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